

## Office of Personnel Management

## § 831.1205

meet the conditions given in paragraphs (a) (2), (3), and (4) of this section. Instead, the individual must be disabled for membership in the National Guard or for the military grade required to hold his or her position and meet the other eligibility requirements under 5 U.S.C. 8337(h)(2).

[58 FR 49179, Sept. 22, 1993, as amended at 63 FR 17049, Apr. 8, 1998]

### § 831.1204 Filing disability retirement applications: General.

(a) Except as provided in paragraphs (c) and (d) of this section, an application for disability retirement is timely only if it is filed with the employing agency before the employee or Member separates from service, or with the former employing agency or OPM within 1 year thereafter.

(b) An application for disability retirement that is filed with OPM, an employing agency or former employing agency by personal delivery is considered filed on the date on which OPM, the employing agency or former employing agency receives it. The date of filing by facsimile is the date of the facsimile. The date of filing by mail is determined by the postmark date; if no legible postmark date appears on the mailing, the application is presumed to have been mailed 5 days before its receipt, excluding days on which OPM, the employing agency or former employing agency, as appropriate, is closed for business. The date of filing by commercial overnight delivery is the date the application is given to the overnight delivery service.

(c) An application for disability retirement that is filed with OPM or the applicant's former employing agency within 1 year after the employee's separation, and that is incompletely executed or submitted in a letter or other form not prescribed by OPM, is deemed timely filed. OPM will not adjudicate the application or make payment until the application is filed on a form prescribed by OPM.

(d) OPM may waive the 1-year time limit if the employee or Member is mentally incompetent on the date of separation or within 1 year thereafter, in which case the individual or his or her representative must file the application with the former employing

agency or OPM within 1 year after the date the individual regains competency or a court appoints a fiduciary, whichever is earlier.

(e) An agency may consider the existence of a pending disability retirement application when deciding whether and when to take other personnel actions. An employee's filing for disability retirement does not require the agency to delay any appropriate personnel action.

[63 FR 17049, Apr. 8, 1998]

### § 831.1205 Agency-filed disability retirement applications.

(a) *Basis for filing an application for an employee.* An agency must file an application for disability retirement of an employee who has 5 years of civilian Federal service when all of the following conditions are met:

(1) The agency has issued a decision to remove the employee;

(2) The agency concludes, after its review of medical documentation, that the cause for unacceptable performance, attendance, or conduct is disease or injury;

(3) The employee is institutionalized, or the agency concludes, based on a review of medical and other information, that the employee is incapable of making a decision to file an application for disability retirement;

(4) The employee has no personal representative or guardian; and

(5) The employee has no immediate family member who is willing to file an application on his or her behalf.

(b) *Agency procedures.* (1) When an agency issues a decision to remove an employee and not all of the conditions described in paragraph (a) of this section have been satisfied, but the removal is based on reasons apparently caused by a medical condition, the agency must advise the employee in writing of his or her possible eligibility for disability retirement.

(2) If the agency is filing a disability retirement application on the employee's behalf, the agency must inform the employee in writing at the same time it informs the employee of its removal decision, or at any time before the separation is effected, that—